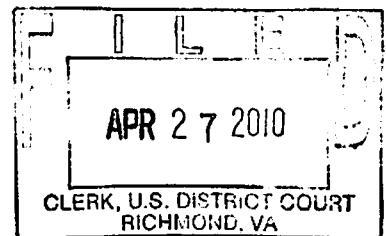


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

CHETANAND KUMAR SEWRAZ, *et al.*,



Plaintiffs,

v.

Civil Action No. 3:08CV100

DAVID LONG, JR., *et al.*,

Defendants.

MEMORANDUM ORDER

Chetanand Kumar Sewraz, a federal inmate proceeding *pro se* and *in forma pauperis*, filed this diversity action. On January 28, 2009, the Court dismissed Sewraz's amended complaint without prejudice. On March 23, 2009, the Court received Sewraz's notice of appeal. The notice of appeal appears to have been executed on February 26, 2009. The envelope in which the notice of appeal was received, however, is stamped March 12, 2009 and postmarked March 13, 2009. Accordingly, on September 16, 2009, the United States Court of Appeals for the Fourth Circuit remanded the case to this Court to make findings necessary to determine whether the notice of appeal was properly delivered to prison officials for mailing within the thirty-day period for filing an appeal. Fed. R. App. P. 4(c)(1); *see Houston v. Lack*, 487 U.S. 266 (1988) (holding that documents mailed to a federal court by a prisoner are deemed filed when properly delivered to officials for mailing).

On November 9, 2009, the Court ordered Plaintiff to submit any affidavits or other evidence that his notice of appeal was timely filed. The Court further requested the United States Attorney to file any relevant obtainable evidence not submitted by Plaintiff. On November 20, 2009, the Court received Plaintiff's response. Plaintiff explains that, on February 26, 2009, he

handed a notice of appeal for this action to prison officials for mailing to the Court. Plaintiff's notice of appeal was addressed to the Court's former address rather than its current address. The notice of appeal was returned to Plaintiff on March 9, 2009. Plaintiff immediately brought the envelope to prison staff at FCI Allenwood. Several days later, prison officials confirmed that the address was correct, and told Plaintiff to resubmit the application to the same address. Plaintiff put his notice of appeal in the mail again on March 12, 2009. This notice of appeal reached the Court on March 23, 2009.

Plaintiff's sworn statement is supported by his submissions, the submission of the United States Attorney, and by the record in this case. (*See* Pl.'s Resp. to Nov. 9, 2009 Order, Att. A (first envelope); Notice of Appeal, Envelope (second envelope); U.S. Atty's Resp. to Nov. 9, 2009 Order.) It appears that the Post Office failed to forward the first notice of appeal because it was addressed to "Clerk of Court USDC-EDVA," while Plaintiff's second notice of appeal was sent to "Clerk's Office United States District Court." Although Plaintiff did not use the Court's current address, it appears that he was never informed that the Court's address had changed. Moreover, Plaintiff's place of incarceration assured him that the Court's previous address was in fact correct.

The Court finds that Plaintiff handed his notice of appeal to prison officials for mailing on February 26, 2009. Plaintiff's notice of appeal was therefore timely filed. *See, e.g., Jusayan v. Immigration and Naturalization Servs.*, No. 97-70979, 1998 WL 482931, at *1 (9th Cir. Aug. 11, 1998) ("Receipt at the court's former address is considered constructive receipt for the purposes of filing an appeal.") (citations omitted); *Lindsey v. City of Cleveland*, No. 1:04cv02239, 2007 WL 782172, at *3 (N.D. Ohio March 13, 2007) (finding prisoner entitled to

benefit of mailbox rule where institution provided incorrect address) (*quoting Houston*, 477 U.S. at 268).

The Clerk is DIRECTED to send a copy of the Memorandum Order to Plaintiff and the Clerk of Court for the Untied States Court of Appeals for the Fourth Circuit.

And it is so ORDERED.

/s/

Richard L. Williams
United States District Judge

Date: APR 27 2010
Richmond, Virginia